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Greg Ricks

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Gregory Ricks)	
)	Case No: 2:08-CV-01174-PMP-(GWF)
Plaintiff,)	
)	
v.)	ANSWER TO COUNTERCLAIM
)	
Bmezine.com, LLC.)	
)	
Defendant.)	
_____)	
)	
Bmezine.com, LLC)	
)	
Counter-Claimant)	
)	
v.)	
)	
Gregory Ricks)	
)	
Counter-Defendant)	
_____)	

1
2 Plaintiff / Counter-Defendant, Gregory Ricks ("Ricks"), by his undersigned
3 counsel, Clarke Douglas Walton of Walton Law Firm, P.C. responds to Counterclaim
4 filed by Defendant / Counter-Claimant, Bmezine.com, LLC ("Bmezine"):

5 **I. COUNTERCLAIM**

6 **I. INTRODUCTION**

- 7
8 1. Ricks admits only that Bmezine has asserted counterclaims against Ricks
9 purportedly pursuant to the Declaratory Judgment Act, the trademark laws of the
10 United States, Nevada and Florida state statutes, and Florida state common law
11 doctrines. Ricks denies each and every remaining allegation in Paragraph 1 of the
12 Counterclaims.

13 **II. JURISDICTION AND VENUE**

- 14
15 2. Ricks admits that the subject matter jurisdiction of this Court is proper pursuant to
16 28 U.S.C. §1331 and §1338, §2201 and §2202 and 15 U.S.C. §1121, but denies the
17 validity of any claims raised by Bmezine in the Counterclaims. Ricks denies each
18 and every remaining allegation in Paragraph 2 of the Counterclaims.
19
20 3. Ricks admits that venue is proper and that he filed the original action in this
21 district, but is without knowledge or information sufficient to form a belief as to
22 the truth or falsity of the remaining allegations in Paragraph 3 of the
23 Counterclaims and therefore denies the same.

24 **III. THE PARTIES**

- 25
26 4. Ricks admits that Bmezine.com, LLC is a Nevada limited liability company, but is
27 without knowledge or information sufficient to form a belief as to the truth or
28

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- 1 falsity of the remaining allegations in Paragraph 4 of the Counterclaims and
2 therefore denies the same.
- 3 5. Ricks is without knowledge or information sufficient to form a belief as to the
4 truth or falsity of the remaining allegations in Paragraph 5 of the Counterclaims
5 and therefore denies the same.
- 6 6. Ricks admits that he is the owner and registrant of BME.COM, but denies the
7 remaining allegations in Paragraph 6 of the Counterclaims.
- 8 7. Ricks denies the allegations in Paragraph 7 of the Counterclaims.
- 9 8. Ricks admits that he is principal of Gee Wiz Domains, but denies the remaining
10 allegations in Paragraph 8 of the Counterclaims.
- 11 9. Ricks admits that Moniker Online Services, LLC is the registration and
12 management provider for the domain name BME.COM, but is without knowledge
13 or information sufficient to form a belief as to the truth or falsity of the remaining
14 allegations in Paragraph 9 of the Counterclaims and therefore denies the same.
- 15 10. Ricks denies the allegations in Paragraph 10 of the Counterclaims.

16 **IV. BACKGROUND**

17 **A. Bmezine's Valuable Common-Law Trademark Rights**

- 18 11. Ricks is without knowledge or information sufficient to form a belief as to the
19 truth or falsity of the allegations in Paragraph 11 of the Counterclaims and
20 therefore denies the same.
- 21 12. Ricks is without knowledge or information sufficient to form a belief as to the
22 truth or falsity of the allegations in Paragraph 12 of the Counterclaims and
23 therefore denies the same.
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- 1 13. Ricks is without knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations in Paragraph 13 of the Counterclaims and
3 therefore denies the same.
4
- 5 14. Ricks denies that the Bmezine mark “BME” has achieved strong secondary
6 meaning and is a famous mark, but is without knowledge or information sufficient
7 to form a belief as to the truth or falsity of the remaining allegations in Paragraph
8 14 of the Counterclaims and therefore denies the same.
9
- 10 15. Ricks denies that the “BME” has acquired distinctiveness, but is without
11 knowledge or information sufficient to form a belief as to the truth or falsity of the
12 remaining allegations in Paragraph 15 of the Counterclaims and therefore denies
13 the same.
14
- 15 16. Ricks is without knowledge or information sufficient to form a belief as to the
16 truth or falsity of the allegations in Paragraph 16 of the Counterclaims and
17 therefore denies the same.
18
- 19 17. Ricks is without knowledge or information sufficient to form a belief as to the
20 truth or falsity of the allegations in Paragraph 17 of the Counterclaims and
21 therefore denies the same.
22
- 23 18. Ricks is without knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations in Paragraph 18 of the Counterclaims and
25 therefore denies the same.
26
- 27 19. Ricks is without knowledge or information sufficient to form a belief as to the
28 truth or falsity of the allegations in Paragraph 19 of the Counterclaims and
therefore denies the same.

- 1 20. Ricks is without knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations in Paragraph 20 of the Counterclaims and
3 therefore denies the same.
4
- 5 21. Ricks denies that Internet users would believe that BME.COM is in some way
6 connected to or affiliated with Bmezone, but is without knowledge or information
7 sufficient to form a belief as to the truth or falsity of the remaining allegations in
8 Paragraph 21 of the Counterclaims and therefore denies the same.
9
- 10 22. Ricks denies the allegations in Paragraph 22 of the Counterclaims.
11
- 12 23. Ricks is without knowledge or information sufficient to form a belief as to the
13 truth or falsity of the allegations in Paragraph 23 and subparagraphs 23(a), 23(b),
14 23(c), 23(d), 23(e), 23(f), 23(g), 23(h), 23(i), 23(j), 23(k) and 23(l) of the
15 Counterclaims and therefore denies the same.
16
- 17 24. Ricks is without knowledge or information sufficient to form a belief as to the
18 truth or falsity of the allegations in Paragraph 24 of the Counterclaims and
19 therefore denies the same.
20
- 21 25. Ricks is without knowledge or information sufficient to form a belief as to the
22 truth or falsity of the allegations in Paragraph 25 of the Counterclaims and
23 therefore denies the same.

24 **C. Ricks's Wrongful Conduct**

- 25 26. Ricks admits that he registered the domain name BME.COM on or about March 6,
26 2000, but denies the remaining allegations in Paragraph 26 of the Counterclaims.
27
- 28 27. Ricks denies the allegations in Paragraph 27 of the Counterclaims.
- 28 28. Ricks denies the allegations in Paragraph 28 of the Counterclaims.

29. Ricks denies the allegations in Paragraph 29 of the Counterclaims.

D. The Infringing Domain Name BME.COM

30. Ricks denies that Bmezine has a complete monopoly, a right in gross, of the use of the three letters BME, to the exclusion of all third party users, and thus, denies the allegations in Paragraph 30 of the Counterclaims.

31. Ricks denies the allegations in Paragraph 31 of the Counterclaims.

32. Ricks denies the allegations in Paragraph 32 of the Counterclaims.

33. Ricks denies the allegations in Paragraph 33 of the Counterclaims.

34. Ricks denies the allegations in Paragraph 34 of the Counterclaims.

35. Ricks denies the allegations in Paragraph 35 of the Counterclaims.

36. Ricks denies the allegations in Paragraph 36 of the Counterclaims.

37. Ricks denies the allegations in Paragraph 37 of the Counterclaims.

38. Ricks denies the allegations in Paragraph 38 of the Counterclaims.

39. Ricks denies the allegations in Paragraph 39 of the Counterclaims.

40. Ricks denies the allegations in Paragraph 40 of the Counterclaims.

41. Ricks denies the allegations in Paragraph 41 of the Counterclaims.

42. Ricks denies the allegations in Paragraph 42 of the Counterclaims.

43. Ricks denies the allegations in Paragraph 43 of the Counterclaims.

44. Ricks denies the allegations in Paragraph 44 of the Counterclaims.

45. Ricks denies the allegations in Paragraph 45 of the Counterclaims.

46. Ricks denies the allegations in Paragraph 46 of the Counterclaims.

1 47. Ricks denies that Bmezine has a complete monopoly, a right in gross, of the use of
2 the three letters BME, to the exclusion of all third party users, and thus, denies the
3 allegations in Paragraph 47 of the Counterclaims.

4 48. Ricks admits he uses the domain name BME.COM, and the associated service
5 mark rights, for search engine services and Bmezine's recent use of BME for
6 email services are closely related to those services offered by Ricks. Ricks denies
7 the remaining allegations in Paragraph 48 of the Counterclaims.

8 49. Ricks admits he uses the domain name BME.COM, and the associated service
9 mark rights, to promote his search engine services and Bmezine's recent use of
10 BME for email services are closely related to those services offered by Ricks.
11 Ricks denies the remaining allegations in Paragraph 49 of the Counterclaims.

12 50. Ricks denies the allegations in Paragraph 50 of the Counterclaims.

13 51. Ricks denies the allegations in Paragraph 51 of the Counterclaims.

14 52. Ricks denies the allegations in Paragraph 52 of the Counterclaims.

15 53. Ricks denies the allegations in Paragraph 46 of the Counterclaims.

16 54. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain
17 name and mark BME.COM. Ricks is without knowledge or information sufficient
18 to form a belief as to the truth or falsity of the remaining allegations in Paragraph
19 54 of the Counterclaims and denies the same.

20 **FIRST CLAIM FOR RELIEF**

21 **Cybersquatting – 15 U.S.C. § 1125(d)**

22 55. Ricks repeats and realleges its response to Paragraphs 1-54, inclusive, of
23 Bmezine's Counterclaims as if fully set forth herein.
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- 1 56. Paragraph 69 calls for a legal conclusion to which no response is required. To the
2 extent that such a response is required, Ricks denies the allegations,
3
4 57. Ricks denies the allegations in Paragraph 57 of the Counterclaims.
5
6 58. Ricks denies the allegations in Paragraph 58 of the Counterclaims.
7
8 59. Ricks denies the allegations in Paragraph 59 of the Counterclaims.
9
10 60. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain
11 name and mark BME.COM. Ricks is without knowledge or information sufficient
12 to form a belief as to the truth or falsity of the remaining allegations in Paragraph
13 60 of the Counterclaims and denies the same.

12 **SECOND CLAIM FOR RELIEF**

13 **Trademark Infringement – 15 U.S.C. §1125(a)**

- 14 61. Ricks repeats and realleges its response to Paragraphs 1-60, inclusive, of
15 Bmezine's Counterclaims as if fully set forth herein.
16
17 62. Paragraph 62 calls for a legal conclusion to which no response is required. To the
18 extent that such a response is required, Ricks denies the allegations,
19
20 63. Ricks denies the allegations in Paragraph 63 of the Counterclaims.
21
22 64. Ricks denies the allegations in Paragraph 64 of the Counterclaims.
23
24 65. Ricks denies the allegations in Paragraph 65 of the Counterclaims.
25
26 66. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain
27 name and mark BME.COM. Ricks is without knowledge or information sufficient
28 to form a belief as to the truth or falsity of the remaining allegations in Paragraph
66 of the Counterclaims and denies the same.
67. Ricks denies the allegations in Paragraph 67 of the Counterclaims.

THIRD CLAIM FOR RELIEF

Willful Trademark Infringement – 15 U.S.C. §1114(1)

68. Ricks repeats and realleges its response to Paragraphs 1-67, inclusive, of Bmezine's Counterclaims as if fully set forth herein.
69. Paragraph 69 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
70. Ricks is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 70 of the Counterclaims and denies the same.
71. Ricks is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 71 of the Counterclaims and denies the same.
72. Paragraph 72 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
73. Ricks denies the allegations in Paragraph 73 of the Counterclaims.
74. Ricks denies the allegations in Paragraph 74 of the Counterclaims.
75. Ricks denies the allegations in Paragraph 75 of the Counterclaims.
76. Ricks denies the allegations in Paragraph 76 of the Counterclaims.
77. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain name and mark BME.COM. The remaining allegations in Paragraph 72 call for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.

FOURTH CLAIM FOR RELIEF

False Designation of Origin

78. Ricks repeats and realleges its response to Paragraphs 1-77, inclusive, of Bmezine's Counterclaims as if fully set forth herein.
79. Paragraph 79 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
80. Ricks denies the allegations in Paragraph 80 of the Counterclaims.
81. Ricks denies the allegations in Paragraph 81 of the Counterclaims.
82. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain name and mark BME.COM. The remaining allegations in Paragraph 82 call for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.

FIFTH CLAIM FOR RELIEF

Unfair Competition

83. Ricks repeats and realleges its response to Paragraphs 1-82, inclusive, of Bmezine's Counterclaims as if fully set forth herein.
84. Paragraph 84 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
85. Ricks denies the allegations in Paragraph 85 of the Counterclaims.
86. Ricks denies the allegations in Paragraph 86 of the Counterclaims.
87. Ricks denies the allegations in Paragraph 87 of the Counterclaims.
88. Ricks denies the allegations in Paragraph 88 of the Counterclaims.
89. Ricks denies the allegations in Paragraph 89 of the Counterclaims.
90. Ricks denies the allegations in Paragraph 90 of the Counterclaims.

- 1 91. Ricks denies the allegations in Paragraph 91 of the Counterclaims.
- 2 92. Ricks denies the allegations in Paragraph 92 of the Counterclaims.
- 3 93. Ricks denies the allegations in Paragraph 93 of the Counterclaims.
- 4 94. Paragraph 94 calls for a legal conclusion to which no response is required. To the
- 5 extent that such a response is required, Ricks denies the allegations.
- 6 95. Ricks denies the allegations in Paragraph 95 of the Counterclaims.
- 7 96. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain
- 8 name and mark BME.COM. The remaining allegations in Paragraph 96 call for a
- 9 legal conclusion to which no response is required. To the extent that such a
- 10 response is required, Ricks denies the allegations.
- 11 97. Ricks denies the allegations in Paragraph 97 of the Counterclaims.
- 12 98. Ricks denies the allegations in Paragraph 98 of the Counterclaims.
- 13 99. Ricks denies the allegations in Paragraph 99 of the Counterclaims.

14 **SIXTH CLAIM FOR RELIEF**

15 **Nevada Common Law Trademark Infringement**

- 16 100. Ricks repeats and realleges its response to Paragraphs 1-99, inclusive, of
- 17 Bmezine's Counterclaims as if fully set forth herein.
- 18 101. Ricks denies the allegations in Paragraph 101 of the Counterclaims.
- 19 102. Ricks denies the allegations in Paragraph 102 of the Counterclaims.
- 20 103. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain
- 21 name and mark BME.COM. The remaining allegations in Paragraph 103 call for a
- 22 legal conclusion to which no response is required. To the extent that such a
- 23 response is required, Ricks denies the allegations.
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SEVENTH CLAIM FOR RELIEF

Deceptive Trade Practices under N.R.S. § 598.0915

104. Ricks repeats and realleges its response to Paragraphs 1-103, inclusive, of Bmezine's Counterclaims as if fully set forth herein.

105. Ricks denies the allegations in Paragraph 105 of the Counterclaims.

106. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain name and mark BME.COM. The remaining allegations in Paragraph 106 call for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.

EIGHTH CLAIM FOR RELIEF

Intentional Interference with Prospective Economic Advantage

107. Ricks repeats and realleges its response to Paragraphs 1-106, inclusive, of Bmezine's Counterclaims as if fully set forth herein.

108. Ricks denies the allegations in Paragraph 108 of the Counterclaims.

109. Ricks denies the allegations in Paragraph 109 of the Counterclaims.

110. Ricks denies the allegations in Paragraph 110 of the Counterclaims.

111. Ricks denies the allegations in Paragraph 111 of the Counterclaims.

112. Ricks denies Bmezine has been or is being damaged by Ricks' use of its domain name and mark BME.COM. The remaining allegations in Paragraph 112 call for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.

113. Ricks denies the allegations in Paragraph 113 of the Counterclaims.

NINTH CLAIM FOR RELIEF

Trademark Infringement – Fla. Stat. §495.131

114. Ricks repeats and realleges its response to Paragraphs 1-113, inclusive, of Bmezine’s Counterclaims as if fully set forth herein.
115. Paragraph 115 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
116. Ricks denies the allegations in Paragraph 116 of the Counterclaims.
117. Ricks denies the allegations in Paragraph 117 of the Counterclaims.
118. Ricks denies the allegations in Paragraph 118 of the Counterclaims.

TENTH CLAIM FOR RELIEF

Dilution Under Fla. Stat. §495.151

119. Ricks repeats and realleges its response to Paragraphs 1-118, inclusive, of Bmezine’s Counterclaims as if fully set forth herein.
120. Paragraph 120 calls for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.
121. Ricks denies that the Bmezine mark “BME” is a famous mark, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 121 of the Counterclaims and therefore denies the same.
122. Ricks denies the allegations in Paragraph 122 of the Counterclaims.
123. Ricks denies the allegations in Paragraph 123 of the Counterclaims.
124. Ricks denies wrongful acts of dilution, and the remaining allegations in Paragraph 124 call for a legal conclusion to which no response is required. To the extent that such a response is required, Ricks denies the allegations.

PRAYER FOR RELIEF

Bmezine is not entitled to any of the relief requested. Ricks requests that the Court deny all counts of Bmezine's Counterclaims, with prejudice.

RICKS AFFIRMATIVE DEFENSES

1. Bmezine fails to state a claim upon which relief can be granted.
2. Bmezine's claims for relief are barred on the basis of its unclean hands.
3. Counts 1-10 of Bmezine's Counterclaims are barred on the basis of laches, acquiescence and estoppel.
4. Bmezine lacks standing to assert Counts 1-10 of the Counterclaims.
5. Bmezine has not enforced its trademark rights against third parties making unauthorized use of its alleged use of the mark BME and has abandoned it mark.
6. Bmezine's alleged mark BME is generic.
7. Bmezine uses BME as a "familiar expression."
8. Bmezine's use and registration of BME for email services is likely to cause confusion with and/or dilute Ricks mark BME.COM.

WHEREFORE, Ricks prays that Bmezine's Counterclaims be dismissed in their entirety, with prejudice and that Ricks be awarded its costs, disbursements and attorneys fees.

1 Date: November 26, 2008

2
3 Respectfully submitted,
4 Greg Ricks
By Counsel

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6

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